

SAMUEL BERNARD JOHNSON, III  
4420 Abruzzi Circle  
Stockton, California 95206  
(209) 982-5904 – Telephone  
[blakviii@aol.com](mailto:blakviii@aol.com) – Email

Plaintiff - *In Pro Se*

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

SAMUEL BERNARD JOHNSON III,  
Plaintiff,

vs.

CHEVRON CORPORATION, a Delaware  
corporation, CHEVRON CORPORATION  
LONG-TERM DISABILITY PLAN  
ORGANIZATION, a Delaware corporation,  
CHEVRON ENVIRONMENTAL  
MANAGEMENT COMPANY, a California  
corporation, CATHERINE DREW,  
KATHRYN M. GALLACHER, ROBERT  
SCHMITT, HARALD SMEDAL, SUSAN  
J. SOLGER, SELLERS STOUGH,  
KRYSTAL TRAN, DEBBIE WONG,  
GARY A. YAMASHITA, and DOES 1-5,

Defendants

Case No.: C 07-05756 SI (JCS)

**PLAINTIFF'S RESPONSE TO COURT'S  
AUGUST 14 AND 19, 2008, ORDERS TO  
HAVE THE FIRST AMENDED  
COMPLAINT MADE PUBLIC OR FILED  
UNDER SEAL**

**I. INTRODUCTION**

Samuel Bernard Johnson III, (hereinafter referred to as “Plaintiff Johnson”) responds to the Court’s August 14, and 19, 2008, Orders to file the First Amended Complaint under seal or to make it public pursuant to the Court’s open policy that its records shall be made available to the general public. By way of this pleading Plaintiff Johnson wishes to make *certain portions* of the First Amended Complaint filed under seal pursuant to Civil Local Rule 79-5(c). Plaintiff Johnson contends that there is good cause for the Court to do such and thereby puts forth the following argument in support of his request to seal portions of the First Amended Complaint under seal pursuant to Civil L.R. 79-5(c).

**II. ARGUMENT**

**A. Health Insurance Portability and Accountability Act Privacy Rule**

Under the Health Insurance Portability and Accountability Act Privacy Rule Plaintiff Johnson’s is considered personal medical information that should be protected from dissemination to the general public, unless such permission is given by Plaintiff Johnson or for certain reportable medical reasons to federal and/or state agencies by Plaintiff Johnson’s Healthcare Provider. While the Court is not a healthcare provider as defined by the meaning, Plaintiff Johnson contends that he had no other choice but to provide the Court with certain confidential medical information about himself in order to support a claim under Title I of the Americans with Disabilities Act of 1990, as amended (hereinafter referred to as the “ADA”). By doing so, Plaintiff Johnson can be harmed by the Court’s open policy on allowing records filed with it to be open to the general public. Plaintiff Johnson further contends that should the Court deny the relief that he seeks by the filing of this pleading and the other supporting pleadings, then Plaintiff Johnson could be further harmed should such confidential medical information remain open to the general public through the Court’s open policy of records.

Plaintiff Johnson further contends that the Health Insurance Portability and Accountability Act Privacy Rule forbids the sharing of Plaintiff Johnson’s confidential medical information unless Plaintiff Johnson provides a written authorization to release such. Plaintiff Johnson informs the Court through the filing of this pleading and any other supporting pleadings

1 that Plaintiff Johnson does not give his written authorization to release his  
2 under the Court's open policy for allowing its records made available to the general public.

3 **B. Authorization Needed In Order To Obtain Or Release Plaintiff Johnson's Medical**  
4 **Records And/Or Information**

5 Plaintiff Johnson contends that he has not provided the Court with an authorization to  
6 release his medical records and/or information to the general public under the Court's open  
7 policy for allowing its records to be made available to the general public.

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14 As stated above, in order for Plaintiff Johnson to bring a claim under the ADA, Plaintiff  
15 Johnson had to disclose certain confidential medical information about himself in order to  
16 support such a claim when he filed the proposed First Amended Complaint with this Court.

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21 Plaintiff Johnson further contends that by providing the Court with his  
22 that he in fact provided the Court with his public health records relating to his  
23 . Likewise, by doing so, the Court cannot disclose Plaintiff Johnson's  
24 under its open policy for making its records available to the general public without  
25 Plaintiff Johnson's written authorization or permission.

26 The Court's conclusion that a statement of confidentiality does not automatically  
27 preclude such information from discovery is in harmony with Ninth Circuit case law. In  
28 *Zambrano v. INS*, for example, the Ninth Circuit observed that there are three types of

1 confidentiality provisions in federal law: those which expressly bar disclosure in legal  
 2 proceedings, those which expressly allow for such disclosure, and those which are silent on the  
 3 issue of disclosure. *Zambrano v. INS*, 972 F.2d 1122, 1125 (9th Cir. 1992), rev'd on other  
 4 grounds, *Reno v. Catholic Servs.*, 509 U.S. 43, 125 L. Ed. 2d 38, 113 S. Ct. 2485 (1993). The  
 5 court noted that general statutory prohibitions against disclosure of information do not bar  
 6 judicial discovery "absent an express prohibition against such disclosure". *Id.* (citing *St. Regis*  
 7 *Paper Co. v. United States*, 368 U.S. 208, 7 L. Ed. 2d 240, 82 S. Ct. 289 (1962)). In the absence  
 8 of express prohibitions against production in a legal proceeding, confidentiality provisions, at  
 9 least in federal statutes, should be narrowly construed.

10 **C. Plaintiff Johnson Could Be Harmed Because Of The Court's Open Records Policy**  
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17 Likewise, while society would like for us to believe that individuals do not discriminate  
 18 against persons with a disability like , the Equal Employment Opportunity  
 19 Commission, (hereinafter referred to as the "EEOC" or "EEOC Charges") would tell you  
 20 otherwise, as individuals to this very day file EEOC Charges against employers like the  
 21 defendants in this action seeking such relief under Title VII of the Civil Rights Act of 1964,  
 22 as amended, 42 U.S.C. § 2000(e), *et. seq.*, the California Fair Employment and Housing Act,  
 23 California Government Code § 12940, *et. seq.* and Title I of the Americans with Disabilities Act  
 24 of 1990, as amended. Plaintiff Johnson further contends that society tends to have a  
 25 preconceived notion that when they come into contact with an individual with they  
 26 too maybe subjected .  
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27 For the reasons listed above, Plaintiff Johnson contends that the Court's open policy  
28 must not be exercised at this time as it applies to the First Amended Complaint being made

1 available to the general public. If such confidential medical information of Plaintiff Johnson's  
 2 was made public at this time, then Plaintiff Johnson's professional career and personal safety  
 3 could be subjected to harm due to his being disseminated under the Court's  
 4 open policy. Plaintiff Johnson further contends that he could be subjected to serious  
 5 embarrassment, discrimination, a hostile work environment, wrongful termination due to  
 6 preconceived notions that society still has about individuals who have . Given such,  
 7 there exists good cause to file certain portions of the First Amended Complaint under seal.

8 Plaintiff Johnson further notes for the Court that during the May 21, 2008, Case  
 9 Management Conference in this action the parties discussed this very exact topic wherein the  
 10 Honorable Susan Illston stated that she would seal the entire original Complaint now, but that  
 11 when trial came in this action that the confidential medical information that Plaintiff Johnson  
 12 seeks to preclude from being made available to the general public would be in fact made  
 13 available to the general public under the Court's open policy. (paraphrased). Plaintiff Johnson  
 14 informs the Court as he did at the May 21, 2008, Case Management Conference and does now  
 15 that he is clearly aware of such and should this matter proceed to trial Plaintiff Johnson will be  
 16 fully prepared to have his confidential medical information disseminated to the general public as  
 17 there is no other means to prevent such, except for sealing the Courtroom to only counsel,  
 18 necessary witnesses and the jury.

### 19 **III. CONCLUSION**

20 Plaintiff Johnson contends that the sealing of his confidential medical information as it  
 21 pertains to his meets the confidentiality provisions in federal law for those, which  
 22 expressly bar disclosure in legal proceedings. Given such, the Court must act swiftly to bar  
 23 access of Plaintiff Johnson's confidential medical information from being disseminated to the  
 24 general public through the Court's open policy that its records are made available to the general  
 25 public. Plaintiff Johnson further asserts that his right to prevent his confidential medical  
 26 information from being disseminated to the general public out weighs the Court's open policy for  
 27 the public to have access to records in this action.

28 By way of the filing of this pleading, Plaintiff Johnson hereby respectfully requests that

1 the Court file the First Amended Complaint (attached as Exhibit A to plaintiff's motion and filed  
2 under seal as Docket Nos. 62 and 74 respectfully. For clarification, Docket No. 62 shall be filed  
3 as the operative First Amended Complaint for viewing by the general public and Docket No. 74  
4 shall be filed under seal as the operative First Amended Complaint as it contains the confidential  
5 and private unredacted sections of Docket No. 62.

6 For all of the reasons stated herein, Plaintiff Johnson now prays that the Court will grant  
7 all of the relief that he seeks by the filing of this pleading as well as other supporting pleadings in  
8 response to the Court's August 14 and 19, 2008, Orders as good cause does exist for the Court to  
9 issue such an Order.

10 /s/

11 Dated this 22<sup>nd</sup> day August of 2008

SAMUEL BERNARD JOHNSON, III